

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HAWAII STEVEDORES, INC.
Employer

and

Case 20-RC-169598

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 100
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.

MARK GASTON PEARCE, CHAIRMAN

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., September 27, 2016.

Member Miscimarra, dissenting.

I would grant review of the Regional Director's Decision and Direction of Election on the basis that substantial questions exist regarding whether 36 of the Employer's supervisory personnel possess one of more of the indicia of supervisor status set forth in Section 2(11) of the Act. The Regional Director found that these supervisory personnel were not statutory supervisors under Section 2(11). The 36 individuals whose supervisory status is disputed oversee work performed by approximately 400 longshoremen, machine operators, and wharf clerks. If the disputed individuals are deemed nonsupervisors, the Employer would have a total of approximately 440 statutory employees as to whom the record indicates statutory supervisory authority was exercised by only six persons: a General Manager, an Auto General Manager, three Managers and one Port Captain. All twelve types of supervisory authority set forth in Section 2(11) over the Employer's 440 employees would be vested exclusively in these six individuals. Given the nature of the Employer's operations, I believe a substantial question exists whether it is plausible to conclude that all supervisory authority regarding 440 statutory employees could be vested exclusively in these six individuals. See *Buchanan Marine*, 363 NLRB No. 58, slip op. at 9-10 (2015) (Member Miscimarra, dissenting) (stating that, when applying the supervisor criteria set forth in Sec. 2(11), the Board should consider (i) the nature of employer's operations; (ii) the work performed by undisputed statutory employees; and (iii) whether it is plausible to conclude that all supervisory authority is vested in persons other than those whose supervisory status is in dispute).

I also believe substantial questions exist regarding whether uncontroverted evidence of supervisory authority was discounted or disregarded “merely because it could have been stronger, more detailed, or supported by more specific examples,” *id.*, slip op. at 9 (Member Miscimarra, dissenting), or because the disputed supervisors’ involvement in discipline did not entail automatic discipline. See *Veolia Transportation Services*, 363 NLRB No. 98, slip op. at 12-14 (2016) (Member Miscimarra, dissenting); Sec. 2(11) (stating that individuals are supervisors if they have authority to “discipline other employees . . . *or* effectively to recommend such action” (emphasis added)). Accordingly, I respectfully dissent.

PHILIP A. MISCIMARRA, MEMBER